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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,322	10/13/2000	Andrzej Mamona	0100.0000810	8828

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VEDDER PRICE KAUFMAN & KAMMHOLZ  
222 N. LASALLE STREET  
CHICAGO, IL 60601

EXAMINER

GROSS, KENNETH A

ART UNIT	PAPER NUMBER
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2122

11

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/687,322

Applicant(s)

MAMONA ET AL.

Examiner

Kenneth A Gross

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5, 6, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the applicant states in Claim 1 that the system configuration parameter contains at least a “dynamic configuration parameter” (lines 5-6). However, in Claim 5, the system configuration parameter comprises at least a “static configuration parameter” (lines 2-3). How can one parameter be both static and dynamic? If “At least one system configuration parameter” is interpreted to mean one parameter, there is a conflict, as well as a need for at least two parameters.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1, 4, 5, 8, 11, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen et al. (U.S. Patent Number 6,496,979).

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In regard to Claim 1, Chen teaches: (a) obtaining at least one system configuration parameter (Figure 8, item 162 and Column 8, lines 34-40); (b) dynamically constructing a least one code bundle from a set of code modules based on the system configuration parameter that comprises at least a dynamic configuration parameter (Column 9, lines 48-50 and Column 8, lines 37-40). A CPU type is a dynamic parameter because the CPU type is different for each computer used to construct the code bundle, and hence the bundle is constructed dynamically once the parameter is obtained; (c) wherein the set of code modules includes a least one code module for a first system configuration parameter and a second code module for a second system configuration parameter. Chen teaches different modules for different CPU types (Column 8, lines 23-40).

Claim 8 contains limitations that has already been addressed in the rejection of Claim 1, and is rejected for the same reasons as Claim 1.

For specific rejections of Claims 4, 5, 11, and 12, see the office action mailed on April 18<sup>th</sup>, 2003.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (U.S. Patent Number 6,496,979) in view of Biggs et al. (U.S. Patent Number 5,504,920).

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For specific rejections of Claims 2 and 9, see the office action mailed on April 18<sup>th</sup>, 2003 (Note: Claim 2 is amended, however, the scope of the Claim has not changed).

7. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (U.S. Patent Number 6,496,979).

For specific rejections of Claims 3 and 10, see the office action mailed on April 18<sup>th</sup>, 2003 (Note: Claim 3 is amended, however, the scope of the Claim has not changed).

8. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (U.S. Patent Number 6,496,979) in view of Amberg et al. (U.S. Patent Number 5,963,743).

For specific rejections of Claims 6 and 13, see the office action mailed on April 18<sup>th</sup>, 2003.

9. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (U.S. Patent Number 6,496,979) in view of Reha et al. (U.S. Patent Number 6,282,709).

For specific rejections of Claims 7 and 14, see the office action mailed on April 18<sup>th</sup>, 2003.

### ***Response to Arguments***

10. Applicant's arguments filed April 5<sup>th</sup>, 2004 have been fully considered but they are not persuasive.

Specifically, the applicant states that Chen does not teach dynamic configuration parameters for system configuration parameters used in the construction of code bundles (Page 6, Paragraph 2). However, Chen does teach parameters that change based on which

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computer (with a specific CPU) having dynamic code bundles constructed for it. Hence the bundle is constructed dynamically once the parameter is obtained.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth A Gross whose telephone number is (703) 305-0542. The examiner can normally be reached on Mon-Fri 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q Dam can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KAG

  
TUAN DAM  
SUPERVISORY PATENT EXAMINER